



## GOVERNOR ARNOLD SCHWARZENEGGER

### STATEMENT OF DECISION

#### Request for Clemency by Michael Angelo Morales

Michael Angelo Morales has been convicted of brutally murdering and raping 17-year-old Terri Winchell. Morales killed Ms. Winchell in a premeditated, surprise attack that occurred while the two were riding in the same car. During this attack, Morales strangled Ms. Winchell with a belt, bludgeoned her 23 times with a hammer, and stabbed her four times with a knife. Morales also raped Ms. Winchell as she lay dying.

A jury found Morales guilty of first-degree murder, with special circumstances, and sentenced him to death. With his execution scheduled for February 21, 2006, Morales requests that his sentence be commuted to life in prison without the possibility of parole.

In early 1981, 21-year-old Morales and his 19-year-old cousin Rick Ortega plotted to kill Ms. Winchell out of jealousy. Ortega was involved in a homosexual relationship at the time and had learned that his lover was dating Ms. Winchell. Ms. Winchell did not know about the Ortega relationship.

To carry out the plot, Ortega invited Ms. Winchell to go shopping. The planned attack occurred while Ortega, Morales, and Ms. Winchell were in Ortega's car. Ortega was driving, Ms. Winchell was in the passenger seat, and Morales sat behind Ms. Winchell in the back seat. Morales had a belt, a hammer, and a knife with him.

Taking the belt, Morales reached towards the front seat where Ms. Winchell was sitting, and he began strangling her. Ms. Winchell struggled and the belt broke.

Morales then began hitting Ms. Winchell with the hammer. As Ms. Winchell fought back and screamed for Ortega to help her, Morales continued hitting her with the hammer, striking her 23 times on the head.

With the car stopped, Morales dragged Ms. Winchell out of the car and into a vineyard where he raped her. Before leaving her there, he stabbed her four times in the chest. Ms. Winchell was found dead at the vineyard.

Based on the evidence of his guilt, a jury convicted Morales of first-degree murder, with special circumstances, and rape. On automatic appeal, the California Supreme Court affirmed the convictions and sentence. Morales subsequently filed habeas corpus petitions in both the state and federal courts. In his federal habeas corpus petition, he pursued 59 legal claims. The federal court considered and rejected on the merits 57 of Morales' claims.<sup>1</sup> Morales appealed to the Ninth Circuit Court of Appeals, which affirmed the district court's findings. Morales then appealed to the United States Supreme Court, which declined to review his case.

Since filing his clemency petition, Morales has continued to litigate his case in state and federal courts. Morales has litigated many issues, including some of the same ones raised in his clemency petition. Now Morales seeks executive clemency based on a plea for mercy and justice.

Morales' request for clemency is based, in part, on his regret, remorse, and rehabilitation. He states that he has demonstrated remorse and atonement for the last 25 years, and that he is a changed man capable of contributing positively to society.

Morales points to his actions after Ms. Winchell's murder, his verbal statement to the court before he was sentenced, and his handwritten statement included with his clemency petition. He highlights that: (1) just hours after the crimes and after he regained his sobriety, he expressed his "despair at having failed to prevent his cousin Rick Ortega from drawing him into a foolhardy attempt to frighten

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<sup>1</sup> Two of Morales' claims were rejected as untimely: (1) that the jury instructions on the definition of "reasonable doubt" were wrong; and (2) that California's death penalty statute is unconstitutional.

Terri Winchell,” and his sorrow for allowing events to go awry and for harming her; (2) at sentencing, he conceded his guilt by telling the court that it was hard for him even to try to correct what he had done and that he realized and regretted how much pain was caused; and (3) more recently, in connection with his request for clemency, he wrote about his acceptance of responsibility for the consequences of his actions.

Morales’ sentiments of remorse and responsibility for the crimes he committed against Ms. Winchell are overshadowed by his statements attributing blame to his cousin Ortega and to his alcohol and PCP use. Also, he expressed remorse and regret at sentencing, but at the same time referred to the horrific murder he committed as a “mistake.” And in his written statement, he used no form of the word “murder” or “kill” to describe the actions for which he says he accepts responsibility, nor did he acknowledge the rape or any of the specific acts he perpetrated against Ms. Winchell.

Morales additionally points to his efforts in prison to “change his heart” as support for his clemency plea. He identifies his “exemplary” institutional record,<sup>2</sup> a re-established relationship with God, close and supportive relationships with family and friends, and reformation reflected through his artistic talents.

The changes in Morales’ life do not override the jury’s decision of guilt and sentence, which have been upheld by all the reviewing courts. Being a changed man today does not change the nature of the murder and rape Morales committed against Ms. Winchell when he was younger.

In his clemency plea, Morales also argues that the death penalty is inappropriate in his case because: (1) his cousin Ortega was the mastermind and architect of Ms. Winchell’s murder; (2) his (Morales’) intoxication on the night of the murder resulted in a psychotic, disinhibited state that produced his homicidal behavior; (3) false testimony by a jailhouse informant at his trial “unquestionably moved the jury to vote for death;” and (4) the prosecutor’s decision to seek the death penalty was discriminatory.

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<sup>2</sup> Model conduct is expected in prison. Here, Morales’ institutional record is not blemish free.

Morales cannot avoid responsibility for his crimes by casting blame on Ortega. Morales, not Ortega, attempted to strangle Ms. Winchell with a belt, used a hammer to hit her on the head 23 times, and dragged her into a vineyard where he raped and stabbed her.<sup>3</sup>

Morales claims that, because of alcohol and PCP, he was not completely aware of the events of that night, and was not in control of his actions. This claim is belied by his actions before and after the brutal murder and rape. A few months before the murder, Morales told his girlfriend Raquel Cardenas that his “friend” has “gotten hurt by a girl, and . . . that he was feeling close to his best friend since he got hurt by that girl.” The day before the murder, Morales “practice[ed]” the strangulation on his housemate Patricia Flores by wrapping the belt around Flores’ neck and then tightening it. And on the day of the murder, Morales told his girlfriend Cardenas that “he was gonna do Rick a favor” and “hurt this girl . . . [and] strangle her.” After the crimes, the broken belt, the hammer, and Ms. Winchell’s purse were found in the home where Morales lived. The belt was found under a mattress, the hammer was found in a refrigerator crisper, and the purse was found in a closet.

This evidence shows that Morales was aware and in control of his actions and their consequences. The federal district court also found that a mental impairment defense based on PCP usage was wholly inconsistent with Morales’ actions on the day of the crimes and with his detailed memory of the crimes.

Morales insists that he has a compelling case for clemency because trial witness Bruce Samuelson lied on the stand. Morales claims that it was Samuelson’s testimony alone that convinced the jury to prescribe a sentence of death, instead of life in prison without the possibility of parole.

This argument was recently reviewed and rejected on the merits by the California Supreme Court. Samuelson’s testimony was not the only lying-in-wait evidence presented to the jury. Cardenas testified that Morales admitted to attacking Ms. Winchell while she was sitting with her back towards him in the car.

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<sup>3</sup> Morales contrasts his death sentence with Ortega’s sentence of life in prison without the possibility of parole. Given the record in Morales’ case, the jury could reasonably conclude that death was the appropriate punishment.

Flores also described the way Morales attempted to strangle Ms. Winchell. And Ortega's testimony at his own trial lends further support for the way Morales attacked Ms. Winchell in the car. The courts have confirmed that Morales' actions in this case qualify as lying in wait for purposes of the special circumstances statute.

Morales places great weight on a January 25, 2006 letter from the trial judge in his case. In this letter, the judge supports clemency based on Samuelson's testimony being the only evidence in support of the lying-in-wait special circumstance that made Morales eligible for the death penalty, and it being the source of the prosecution's substantial aggravating circumstances.<sup>4</sup>

A review of the evidence and trial transcripts reveals that the judge's letter is not an accurate reflection of the record before the jury and courts because there is other evidence supporting the lying-in-wait special circumstance. Also, through the cross-examination of Samuelson, the jury and judge were well aware of the fact the Samuelson was a jailhouse informant and was providing his testimony in return for a deal on his own pending criminal charges.

As for aggravating factors, the prosecutor primarily relied upon the horrific nature of the crimes committed by Morales and the statements made by Morales to others. In addition to the aggravating factors presented by the prosecutor, Morales' counsel presented mitigating factors that were also considered by the jury and judge.

Morales also asserts that the prosecutor's charging decision was biased by race, gender, and ethnicity. This claim was rejected by the federal district court because Morales failed to present any evidence that the prosecutor intentionally discriminated against Morales. The court also rejected the claim because the statistical evidence submitted by Morales did not show purposeful discrimination in his case.

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<sup>4</sup> One Morales juror submitted a declaration supporting clemency. However, this declaration does not provide any persuasive information that the sentence in Morales' case was improper. Four other Morales jurors submitted declarations stating that death continues to be the appropriate penalty in this case.

Nothing in the record or the materials before me compels a grant of clemency. The pain Ms. Winchell's loved ones have been forced to endure at the hands of Morales is unfathomable as is the brutality of the acts he perpetrated.

Based on the record and the totality of circumstances in this case, Morales' request for clemency is denied.

DATED: February 17, 2006

  
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ARNOLD SCHWARZENEGGER  
Governor of the State of California